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I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office, Commissioner for Patents, via the EFS pursuant to 37 CFR §1.8 on the below date:

Date: December 3, 2008

Name: John C. Freeman, Esq.

Signature: 

PATENT
CASE NO. 12212/39

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application:)
)
Raymond I. Myers)
) Group Art Unit: 3735
U.S. Patent Application)
Serial No.: 10/750,789)
)
Filed: January 2, 2004)
) Examiner: David M. Shay
)
For: LENTICULAR REFRACTIVE) Confirmation No. 1486
SURGERY OF PRESBYOPIA,)
OTHER REFRACTIVE ERRORS,)
AND CATARACT RETARDATION)

STATEMENT OF COMMUNICATION WITH EXAMINER

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

On December 2, 2008, the undersigned left a voicemail message with Examiner Shay regarding the above mentioned application. In the voicemail message, the undersigned noted that the Examiner's Communication mailed on September 4, 2008 with a Notice of Allowance indicated that the Examiner was relying on the above mentioned application having an effective filing date of March 21, 1996 which would render reissue patent RE40,420 not being prior art. The undersigned's message noted that steps were being taken to correct the priority claim in earlier filed U.S. applications via petition so that the

present application could gain the benefit of the March 21, 1996 filing date. The message further noted that the petitions had not been granted and so the Applicant would not be filing the Issue Fee due on December 4, 2008. The message added that a Request for Continued Examination would be filed by December 4, 2008 and would include a request to suspend prosecution of the application for a period of three months so that petitions regarding the priority issue could be decided on within the three month period.

In summary, the undersigned informed Examiner Shay on December 2, 2008 that the Issue Fee would not be paid by the December 4, 2008 deadline since Examiner Shay erroneously assumed that the above mentioned application could properly claim priority to the March 21, 1996 filing date as of the September 4, 2008 mailing of the Notice of Allowance. To the extent that Applicant or his representatives gave the impression during prosecution that the priority claim to the March 21, 1996 filing date had been perfected, the undersigned apologizes. Applicant is presently in the process of trying to perfect the priority claim via petition and will inform Examiner Shay and the Patent Office when the priority claim has been perfected.

Respectfully submitted,



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Attorney for Applicant

Date: December 3, 2008

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